

ferring to *Wilton v. Brignell*, [1875] W. N. 239, and distinguishing *Jones v. Hulton*, [1909] 2 K. B. 444, [1910] A. C. 20.

The learned Chief Justice then concluded:—

The alleged libel does not refer to any person by name, but makes a reference that can only be understood having regard to extraneous circumstances. Now, might it not be a most cogent argument, supposing there was evidence pro and con, to lead the jury to a conclusion as to which view to take, that the defendant had admitted, when interrogated, "I intended to refer to the plaintiff"? It would tend to strengthen the view that the plaintiff was the person who would be understood by the associates of the plaintiff, or persons acquainted with the circumstances, to have been referred to.

Then privilege is pleaded; and I do not know why, privilege being pleaded, and it being essential to prove malice, if the occasion is shewn to be privileged, the evidence would not be admissible on that issue to shew that the defendant intended to strike at the plaintiff.

The fact referred to by Mr. Gibbons, that that issue does not arise in the course of the trial until it has been shewn that the occasion was privileged, is wholly immaterial. It is one of the issues on the record, and discovery is not confined as the argument would confine it, but it is open upon any issue on the record which may in the course of the trial go to the jury.

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DIVISIONAL COURT.

MAY 16TH, 1910.

RE FEE AND ADAMS.

*Landlord and Tenant—Overholding Tenants Act—Termination of Tenancy—Demand of Possession—Necessity for—Jurisdiction of County Court Judge—Determination of Disputed Question of Fact.*

Application by one Adams, as tenant, to set aside an order made by the Judge of the District Court of Nipissing for the issue of a writ for the delivery of possession of certain lands to one Fee, as landlord, pursuant to the Overholding Tenants Act, R. S. O. 1897 ch. 171; an order for the removal of the proceedings into the High Court having been made by MEREDITH, C.J.C.P., and the proceedings removed accordingly.